FILED
MAY 27 1976
MICHAEL RODAK, JR., CLERK

No. 75-1655

In the
Supreme Court of the United States
October Term, 1975

ROBERT LAGORIO,

Petitioner,

vs.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al.

Respondents,

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Philip F. Johnson
John H. Stassen
Attorneys for Respondents

Kirkland & Ellis
Suite 5800
200 E. Randolph Drive
Chicago, Illinois 60601

The Scheffer Press, Inc.—(312) 263-6850

INDEX

PAGE

QUESTION PRESENTED 1

STATUTE INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR DENYING THE WRIT 3

CONCLUSION 5

TABLE OF AUTHORITIES

CASES

Cargill, Inc. v. *Board of Trade of the City of Chicago*, 164 F.2d 820 (7th Cir. 1947), *cert. denied*, 333 U.S. 880 (1947) 4

Case & Co., Inc. v. *Board of Trade of City of Chicago*, 523 F.2d 355 (7th Cir. 1975) 4

Daniel v. *Board of Trade of the City of Chicago*, 164 F.2d 815 (7th Cir. 1947) 4

STATUTES

Commodity Exchange Act (7 U.S.C. § 1 *et seq.*) 2-4

Section 5(d) [7 U.S.C. § 7(d)] 2

Section 5a(8) [7 U.S.C. § 7a(8)] 2

Section 8a(6) [7 U.S.C. § 12a(6)] 2

Section 9(b) [7 U.S.C. § 13(b)] 2-3

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1655

ROBERT LAGORIO,

Petitioner,

vs.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al.

Respondents,

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Board of Trade of the City of Chicago and the thirteen individual Directors named in the complaint (hereinafter collectively referred to as the "Board"), submit that the petition for writ of certiorari is without merit and should be denied.

QUESTION PRESENTED

This case does not raise the "Questions Presented" framed in the petition (p. 2). The petitioner's first "Question" portraying the decision below as granting the Board an "exemption" from the laws prohibiting price manipulation is both contrived and sensational. Similarly, the presumptions in petitioner's second "Question" that a manipulation had occurred and that he was injured there-

by were expressly rejected as factually unsupported by the Court of Appeals.

The only issue presented is whether the lower court committed reversible error by not holding the Board liable for damages to the petitioner under the Commodity Exchange Act when the Board complied with an emergency telegram from the Act's Administrator specifying certain limitations upon new market participation that he considered necessary to prevent a distortion or manipulation of prices on the Board.

STATUTE INVOLVED

The Board and its Directors have federally-created duties under the Commodity Exchange Act [7 U.S.C. §1 *et seq.*] to maintain a fair and orderly market. Section 8a(6) of the Act [7 U.S.C. §12a(6)], for example, authorizes the federal regulator under the Act to alert the Board whenever the threat of a market disorder or manipulation is perceived by the agency. The Board, in turn, is required by section 5(d) of the Act [7 U.S.C. §7(d)] to provide for the prevention of manipulation or corners on the Board and, pursuant thereto, has adopted internal rules to detect, remedy or punish violations of that nature. Finally, section 5a(8) of the Act [7 U.S.C. §7a(8)] places an affirmative duty on the Board to administer and enforce those rules with reasonable diligence. This is the pertinent legal framework for the events surrounding the case, including the Board's receipt of a "§8a(6)" notice from the Act Administrator and its subsequent enforcement pursuant to §5a(8) of those rules adopted under §5(d) of the Act.

Petitioner's reliance upon section 9(b) of the Act [7 U.S.C. §13(b)] for a civil remedy is inapposite on

BLEED THROUGH

its face in that it provides solely for criminal sanctions. The Court of Appeals in fact, rejected section 9(b) as a basis for suit (p. A13).

STATEMENT OF THE CASE

Petitioner's Statement (pp. 3-4) contains a number of inaccuracies or omissions. For example, petitioner's case hinged upon the theory that the Board's action allowed a certain class of persons (sellers owning the actual commodity) to continue to trade freely, thus depressing the market price. The record established and the Court of Appeals found, however, that no such sellers engaged in new trading following the Board's action. At another point in the Statement, petitioner says that the Act Administrator intended that the Board's action would depress prices. The evidence of record, on the contrary, is that the Administrator sought merely to prevent a manipulation or market disorder on the Board. Similarly, petitioner misstates the decision of the Court of Appeals in order to give it the coloration of an "exemption" ruling in favor of the Board.

REASONS FOR DENYING THE WRIT

Petitioner's argument for granting the writ is without merit. His characterization of the lower court's ruling as "exempting" the Board from the laws against market manipulation is simply a contrivance, bearing no resemblance to the actual finding that the Board's action in response to the Act Administrator's telegram was a valid and lawful exercise of its duty under the Commodity Exchange Act to maintain a fair, orderly market and to *prevent* manipulative conduct.

The Board's action has already been reviewed exhaustively by at least three tribunals. The Commodity Exchange Commission, an agency under the Commodity Exchange Act which is independent of the Act Administrator, reviewed the Board's conduct while this case was pending in the District Court. The Commission concluded that the Board had not violated the Act. Subsequently, both the District Court and the Court of Appeals reviewed the matter, including the Commission's report, and likewise found in the Board's favor. None of those rulings purported to "exempt" the Board from the manipulation provisions of the Act but simply acknowledged the fact that the Board, as a licensed "contract market," is obliged to take steps in the market from time to time which will maintain or restore orderly trading. Such actions are not "manipulative" within the meaning of the Act but are, on the contrary, anti-manipulative in purpose.

The Commodity Exchange Commission, the District Court and the Court of Appeals utilized well-established legal principles in reviewing the Board's actions. The cases cited by those tribunals have served as guideposts for the Board and other exchanges for many years. *Daniel* v. *Board of Trade of the City of Chicago,* 164 F.2d 815 (7th Cir. 1947); *Cargill, Inc.* v. *Board of Trade of the City of Chicago,* 164 F.2d 820 (7th Cir. 1947), *cert. denied,* 333 U.S. 880 (1947). And those precepts remain valid today. See *Case & Co., Inc.* v. *Board of Trade of the City of Chicago,* 523 F.2d 355 (7th Cir. 1975). Petitioner does not assert, nor do we find, any conflict of authority between the circuits on the legal issues in this case.

Petitioner, in summary, has shown no special and important reasons why a writ of certiorari should issue. No new or novel federal question is posed; no issue was

BLEED THROUGH

resolved below in a way that conflicts with the rulings of this Court; and no conclusion was reached that so far departs from the accepted and usual course of judicial proceedings that the exercise of this Court's power of supervision is called for.

CONCLUSION

Accordingly, the Respondents respectfully urge that the petition for writ of certiorari be denied.

Respectfully submitted,

PHILIP F. JOHNSON
JOHN H. STASSEN
Attorneys for Respondents

KIRKLAND & ELLIS
Suite 5800
200 E. Randolph Drive
Chicago, Illinois 60601